associated with telemarketing calls initiated by IXCs or their marketing agents. We found that extending the verification rules to in-bound calls was the least burdensome method of protecting consumers.[125]

45. AT&T, MCI and Sprint filed petitions seeking reconsideration of the Commission's decision to extend the PIC-verification rules to in-bound calls.[126] Petitioners state that complying with this provision will cost them millions of dollars in start-up and annually-recurring costs without concomitant public benefits.[127] Petitioners claim that the relatively few consumer complaints regarding in-bound slamming do not justify the cost of the remedy adopted by the Commission.[128] MCI later reversed its position on this issue and now "no longer opposes the imposition of such a requirement on sales involving residential and small business consumers."[129] Moreover, MCI recently agreed to use an independent third party to verify nearly 100 percent of all residential and small business orders generated through LOAs.[130]

46. The petitioners' analyses of the costs and benefits of the in-bound PIC-change verification requirement offer little to counter our earlier conclusion that the requirement offers the most practical, cost-effective means of protecting in-bound callers against slamming by unscrupulous IXCs. The crux of the petitioners' arguments is that the costs to IXCs to implement the in-bound verification requirements are too high and the public benefits are too low.[131] Each petitioner claims that its costs for start-up and recurring maintenance of an in-bound verification program would be measured in the millions and perhaps tens of millions of dollars.[132] The cost figures petitioners cite, however, appear to include cost estimates of instituting and maintaining a full (in-bound and out-bound) PIC-change verification program. Despite the fact that all IXC telemarketers are already required to verify out-bound PIC changes, no petitioner

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[125] *1995 Report and Order*, 10 FCC Rcd at 9564.

[126] General Communication, Inc. (GCI), Airtouch and CompTel later filed comments supporting AT&T, MCI and Sprint's position that the PIC-change verification rules should not be extended to in-bound calls. GCI Comments at 2.; AirTouch Comments at 1; CompTel Comments at 3-6.

[127] AT&T Petition at 10; Sprint Petition at 10; MCI Petition at 8. *See* note 132, *infra*.

[128] AT&T Petition at 11-12; MCI Petition at 8-10; Sprint Petition at 13-16.

[129] *See* Letter from Donald F. Evans, Vice President, Federal Regulatory Affairs, MCI Telecommunications Corporation to William F. Caton, Secretary, FCC (Feb. 13, 1996) (filed with a letter from Donald J. Elardo, MCI, to John Muleta, FCC (May 30, 1996)).

[130] MCI Telecommunications Corp., Consent Decree, DA 96-1010 (Com. Car. Bur. Jun. 21, 1996). In a separate letter to the Commission, MCI also indicated its support for mandatory independent third-party verification for residential and small business consumers, unless the consumers directly contact their LECs to change their service providers. Letter from Mary J. Sisak, MCI Telecommunications Corp. to William Caton, FCC, CC Docket No. 94-129 (Jan. 13, 1997) (*ex parte*).

[131] *See, e.g.*, AT&T Petition at 7.

[132] For example, AT&T estimates that in-bound verification could cost up to $36.5 million annually (with start-up costs of as much as $3.1 million). AT&T Petition at 10. *Cf.* MCI Petition at 8 (estimating the cost to be as much as $10 million the first year, with $1.5 million for capital expenses and $6.3 million for operational costs); Sprint Petition at 12 (estimating first-year costs to be $10.1 million, and annual recurring costs to be $8.9 million).

explains why its cost estimates focus on full start-up costs and not the incremental costs of adding in-bound calls to the existing verification process. In estimating the additional time required to verify in-bound PIC changes, some petitioners also include the cost of revenues foregone because of the additional time involved in obtaining verification. However, any revenues lost because of delays caused by verification of new customer PIC changes would be offset by revenues gained because of the delay in switching existing customers to other PICs.

47. In addition, petitioners fail to provide call volume or per-consumer cost information in their oppositions. While volume estimates, combined with cost estimates, could be a relevant method for considering the costs and benefits associated with extending the verification rules to in-bound calls, the petitioners have failed to provide any information that could be used in such an analysis. For example, none of the petitioners identified over how many in-bound calls its estimated costs are spread. We also note that we received three widely varying cost estimates from three different companies,[133] which cannot be reconciled without some indication of their respective business strategies or projected call volumes.

48. Nor are we persuaded by petitioners' claims that few consumers have actually lodged complaints with the Commission regarding instances of slamming as a result of in-bound calls to IXCs. AT&T and Sprint argue that information obtained from the Commission indicates that there are few complaints of in-bound slamming. Petitioners do not provide any specific information to support that claim; rather, the pleadings provided by the petitioners are anecdotal. Even if there are presently only a small number of in-bound slamming complaints, that number will no doubt rise if local competition develops and triggers increased marketing. We believe that application of our PIC-verification rules to in-bound calls is the most cost-effective way to deal with this projected increase in in-bound slamming complaints.

49. AT&T also asserts that in-bound verification is burdensome for consumers. AT&T claims that "[r]esidential consumers who place calls to an IXC's in-bound telemarketing or call servicing center requesting a change in their long distance carrier expect those orders to be implemented conveniently and promptly by the IXC, without further involvement by the consumer."[134] AT&T has not, however, convinced us that in-bound callers are any more burdened by PIC verification than consumers receiving out-bound calls. AT&T's petition does not address whether consumers would find such additional protective steps valuable, nor does any petitioner or commenter cite to any relevant market research supporting their claims of consumer indifference or opposition to such safeguards. Sprint argues that consumers making in-bound calls are more focused on their long distance service needs than consumers receiving out-bound calls.[135] Of course, a consumer's focus could depend on whether it was making a service request call or responding to incentive advertising. Based on the limited information provided by the petitioners in this regard, we are not convinced that there is sufficient difference between the two modes of telemarketing to justify such vastly different treatment.

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[133] *Id.*

[134] AT&T Petition at 10-11.

[135] Sprint Petition at ii.

50. Moreover, the cost concerns raised by petitioners must be balanced against the interests of consumers in deciding whether verification procedures should apply to in-bound calls.[136] Important questions to be considered are "what level of privacy protection adequately balances the legitimate interest of individuals and service providers" and whether current regulations provide the desired level of protection.[137] Developments in technology have enabled telecommunications carriers to obtain calling information about in-bound calling consumers.[138] We believe that access to such information may provide increased incentive and opportunity for IXCs to "submit or execute"[139] unauthorized changes. Moreover, given the frequency and extent of slamming evidenced over the past few years, it appears likely that if in-bound calls were exempted from the Commission's verification procedures, in-bound calling could be used as an alternative to compliance with the Commission's verification procedures. Consumers could continue to be subjected to deceptive and misleading practices associated with slamming. Therefore, it is important that the Commission's verification requirements apply to in-bound calls to safeguard consumers' privacy.

51. We continue to believe that consumers who place calls to a carrier's sales or marketing center should receive the same protection as consumers who are contacted by the carrier. With the availability of consumer information provided as part of an in-bound call, protecting consumer rights to privacy and control of their telecommunications service is in the public interest. If we did not extend PIC verification to in-bound calls, we believe that some "IXCs may switch from mailing inducement-laden LOAs to mailing marketing pieces in which a consumer is urged to call a business number in order to receive a promised inducement"[140] where "[a]n unauthorized conversion could easily take place on such a call."[141] Therefore, we deny the petitions for reconsideration insofar as they request that we do not extend our PIC-change verification requirements to in-bound calls.[142] We seek further comment, however, in our Further Notice of Proposed Rule Making, *supra*, on the volume of in-bound calls received by carriers, and on the per-consumer costs for verification.

B. LOAs Combined with Checks (Section 64.1150(d))

52. In the *1995 Report and Order*, we found that much of the abuse, misrepresentation, and consumer confusion concerning LOAs occurred when an inducement and an LOA are combined in the same document in a deceptive or misleading manner. The LOA slamming complaints generally described deceptive marketing practices in which consumers were induced to sign form documents that did not clearly advise the consumers that they were authorizing a change in their PICs. We determined that the

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[136] *See supra* paras. 4-7.

[137] *Privacy and the NII: Safeguarding Telecommunications-Related Personal Information*, U.S. Dept. of Commerce, Nat'l Telecommunications Info. Admin., at 7 (Oct. 1995) (*NTIA Privacy Report*).

[138] *See supra* para. 4.

[139] 47 U.S.C. § 258(a).

[140] *See NPRM* Comments of Consumer Action at 3-4.

[141] *Id.*

[142] *See supra* paras. 19-20.

only way to ensure that the consumer can always make a truly informed choice was to require that the LOA be a separate or severable document.

53. We also decided, however, that a limited exception should be made for checks that authorize PIC changes. Although some IXCs had used checks combined with LOAs to mislead and deceive consumers, we recognized that most IXCs use checks in their marketing campaigns in an appropriate and non-misleading manner, resulting in few consumer complaints. To ensure that such checks do not mislead or confuse consumers, we instituted certain safeguards. We required that a valid LOA check contain only the required LOA language and the necessary information to make it a negotiable instrument, and that the check not contain any promotional language or material. Further, we required carriers to continue to place the required LOA language near the signature line on the back of the check. In addition, we required that carriers print, in easily readable, bold-face type on the front of the check, a notice that the consumer is authorizing a PIC change by signing the check.

54. In its petition for limited reconsideration, MCI urges the Commission to prohibit IXCs from combining LOAs with checks in all instances.[143] Citing Commission concerns expressed in the *1995 Report and Order*, MCI states that it found the Commission's rationale for permitting LOA/checks difficult to understand.[144] MCI contends that LOA/checks represent a significant portion of the complaints received by the Commission with regard to unauthorized conversions.[145] MCI cites a December 30, 1994 response by the Commission to a Freedom-of-Information Act (FOIA) request.[146] MCI contends that the Commission "indicates that, from a representative sample of 430 complaints, 47 of those involved alleged unauthorized conversions due to problems with checks."[147] Further, MCI cites numerous newspaper articles describing the nation-wide slamming problem, including a Newsday article concerning Sonic Communications and the LOA/checks it used to market its services in a deceptive manner.[148] Although MCI concedes that it has used LOA/checks as part of its strategy to acquire new consumers, it argues that, "on balance, the better approach would be to forbid their use by all carriers."[149] Making a similar argument, NAAG, in its petition, also urges the Commission to prohibit combined check/LOAs.[150] GCI supports both MCI and NAAG on this issue.[151]

55. AT&T opposes both petitions. AT&T argues that the Commission decision allowing the

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[143] MCI Petition at 10-15.

[144] *Id.* at 11.

[145] *Id.*

[146] *Id.* at 11-12.

[147] *Id.* at 12.

[148] *Id.*

[149] *Id.* at 15.

[150] NAAG Petition at 2.

[151] GCI Petition at 6.

LOA/check exception to the "separate or severable document" requirement "properly balances the need for consumer protection from slamming against the public interest in preserving vigorous competition in the long distance marketplace."[152] AT&T further argues that "MCI's reconsideration petition proceeds from the erroneous premise that all IXCs should be precluded from using non-deceptive check/LOAs for legitimate marketing purposes, simply because some unethical carriers may employ such documents (albeit without Commission-prescribed disclosures) to mislead long distance consumers."[153]

56. We are not persuaded that we should further revise the rules to prohibit all combined checks/LOAs. A full record was developed on the issue of separate and severable documents, and the LOA/check exception. The petitioners and commenters add no new information or arguments that would persuade us to reverse our determination on this issue. With regard to the complaints identified in the Commission's response to the FOIA request, MCI fails to mention that all of the 47 complaints were against one former IXC. We have instituted significant safeguards to protect consumers from abuses, including requiring carriers to print the required LOA language in easily readable bold-face type on the front of the check and requiring that no promotional material be included on the check. In our *1995 Report and Order*, we described the kind of LOA/check we believed to be acceptable.[154] Furthermore, although we have received large numbers of complaints regarding the use of LOAs and other promotional materials, as stated above, we have received relatively few complaints alleging that LOA/checks were the basis of an unauthorized PIC change. For the foregoing reasons, we will continue to permit the use of LOAs combined with checks.

C. Separable LOAs (Section 64.1150(b))

57. As stated above, we have required that the LOA be a separate or separable document. Although we initially sought comment on whether LOAs and promotional materials should always be physically separate and not merely separable, we were persuaded by commenters that a separable LOA be allowed to permit more flexibility in their marketing efforts. In order to provide for both consumer protection and marketing flexibility, we decided to require that LOAs be separable (*i.e.*, "ultimately" separate) from all promotional material. Further, we prescribed the minimum requirements for LOAs so that the potential slamming abuses described by commenters would be eliminated or severely reduced.

58. NAAG, in its petition, argues that all LOAs should be physically separate from all promotional materials and not merely separable.[155] NAAG avers that the current Commission rules will result in consumer frustration and confusion.[156] MCI, Sprint, and TRA have offered opposing views, citing much of the Commission's original rationale for allowing separable as well as separate LOAs.[157]

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[152] AT&T Opposition at 2.

[153] *Id.* at 7-8.

[154] *1995 Report and Order*, 10 FCC Rcd at 9573-74.

[155] NAAG Petition at 11-12.

[156] *Id.*

[157] MCI Opposition at 3-4; Sprint Opposition at 5; and TRA Comments at 9-10.

59. Requiring that LOA language and promotional material be physically separate would be the most extreme demarcation between the two that we could establish. We continue to believe that the lesser requirement that the two be separable reasonably balances the informational interests of consumers and the marketing flexibility of the industry. Because this issue was fully explored in the *1995 Report and Order* and because the petitioners and commenters have raised no new facts or issues, we deny the petitions for reconsideration and continue to allow "separable" LOAs.

D. Consistency of Translation Between LOAs and Promotional Materials (Section 64.1150(g))

60. In the *1995 Report and Order*, we recognized that the non-English speaking population represents a growing market in this country that IXCs are targeting for domestic and international business. Some of these consumers have alleged that the non-English versions of the LOA do not contain all of the text of the English versions of the LOA. As a result, material portions of the LOA are in only one language, typically English, which the non-English speaking consumers may not fully understand. We asked whether we should require *all* parts of an LOA to be translated if *any* part were translated. Supported by the overwhelming majority of commenters, we adopted such a rule.

61. In its petition, NAAG argues that our LOA rules should require that if an "LOA is provided in connection with any promotion, all or part of which is in a language other than English, the LOA must also be provided in that other language."[158] Such a requirement, NAAG contends, "would foreclose such abuses as the use of all-English LOAs in connection with a face to face or telemarketing promotional campaign conducted in a language other than English."[159] NAAG suggests that although we correctly require that LOAs provide full disclosure in any language used on an LOA, the applicable provision is "silent as to the use of more than one language in the interexchange advertising and promotional materials."[160] NAAG argues:

> oversight could lead to multi-lingual promotions in which the claims made to motivate consumers to choose an interexchange carrier would differ depending on what language is used . . . . Unless the FCC amends section 64.1150(g), an LOA used in connection with a multi-lingual promotional campaign might be entirely in English.[161]

NAAG recommends that "any promotion, in which any inducements to switch long distance service are in a language other than English, must contain a full explanation and make all disclosures in each language used."[162] No oppositions or comments were filed on this aspect of NAAG's petition.

62. Consistent with the approach we took in the *1995 Report and Order*, we are persuaded by NAAG's arguments that the LOA should be fully translated into the same language as the associated written promotional materials or oral claims and instructions. While we did not in the *1995 Report and*

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[158] NAAG Petition at 2.

[159] *Id.* at 15.

[160] *Id.* at 16.

[161] *Id.*

[162] *Id.*

Order, and do not now, prescribe requirements for promotional materials, we do not intend to allow IXCs to provide promotional materials, oral descriptions or instructions in one language that instruct unsuspecting consumers to fill out and sign an LOA that is entirely in another language. Therefore, we will require IXCs to fully translate their LOAs into the same language(s) as their associated promotional materials, oral descriptions and instructions.

E. "Welcome Package" Verification Option

63. In its reconsideration petition, NAAG argues that the "welcome package" option of Sections 64.1100(d)(7) and (8) should be amended to eliminate the "negative-option" aspect of these PIC-change verification rules.[163] NAAG asserts that the provisions need to be revised to eliminate the automatic switching of a consumer, if the consumer does not return a postcard to the IXC within the 14-day period prescribed by the provision.[164] AirTouch Communications, AT&T, MCI, and Sprint oppose NAAG's petition on this issue. These opponents argue that NAAG confuses the negative-option LOAs with one of the PIC verification procedures IXCs use to provide notice to consumers of an already-authorized service change.[165] The important distinction, the parties claim, is that in the latter, consumers have already made their choice orally during a telemarketing call and the follow-up communication (consumer-information package with return postcard) is provided as additional notice and confirmation of the pending service change.[166] The opponents state that the former case, the negative-option LOA, purports to authorize a service change in and of itself, without any prior oral agreement.[167]

64. We agree with these latter commenters regarding the distinction between a post-sale verification pursuant to Section 64.1100(d) and negative-option LOAs, which are prohibited by Section 64.1150(f). We also agree with NAAG, however, that in practice, this distinction may be blurred. While Section 64.1100(d) was intended as a *post-sale* verification option, it could be used to switch a subscriber who has not actually previously consented to a PC change in the following manner: an unscrupulous telemarketer sends to a subscriber who has not consented to a PC change a post card designed to be used by the subscriber to deny, cancel, or confirm a PC-change order. Under the current rule, if the subscriber does not return the post card, the carrier may execute the PC change after 14 days, even if the subscriber does not return the post card. We are concerned that such activity could have the practical effect of operating like a negative- option LOA, to the detriment of the consumer. Because we do not have sufficient information in the record to assess the potential effect of eliminating the "negative-option" aspect of this verification option, we decline to adopt NAAG's proposal at this time. However, we invite additional comment in our Further Notice of Proposed Rule Making, *supra,* on whether Section 64.1100(d), to the extent that it may be used to circumvent our prohibition of negative-option LOAs under Section 64.1150(f), should be eliminated in whole or in part.[168]

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[163] *Id.* at 16-17.

[164] *Id.*

[165] *See, e.g.*, Sprint Opposition at 5.

[166] *See, e.g.*, MCI Opposition at 8.

[167] *See, e.g., id.*

[168] *See supra* paras. 16-18.

F. Consumer Liability to Unauthorized Carriers

65. NAAG, in its petition for reconsideration, urges the Commission to absolve slammed subscribers of all liability for charges assessed by unauthorized IXCs.[169] We do not have sufficient information in the record to determine whether total forgiveness of charges would further deter IXCs from slamming. Therefore, we decline to adopt NAAG's petition at this time. However, we invite commenters, in our Further Notice of Proposed Rule Making, *supra*, to consider whether a subscriber whose carrier selection has been changed without authorization should be liable for charges assessed by an unauthorized carrier in the contexts of both local and interexchange service.[170]

G. Interstate/Intrastate vs. InterLATA/IntraLATA (Section 64.1150(e)(4))

66. Section 64.1150(e)(4) provides, in part, that, "[t]o the extent that a jurisdiction allows the selection of additional primary exchange carriers (*e.g.*, for intrastate or international calling), the letter of agency must contain separate statements regarding those choices."[171] Allnet, in its petition, urges the Commission, "in order to avoid any unnecessary confusion," to clarify Section 64.1150(e)(4) by using the terms "interLATA" and "intraLATA"[172] instead of the terms "interstate" and "intrastate."[173] Sprint subsequently filed comments in support of Allnet's position.[174] MCI and GCI disagree, and note that LATAs were not established in either Alaska or Hawaii,[175] and urge the Commission to amend Section 64.1150(e)(4) so that both sets of terms are allowed, namely interstate/intrastate and interLATA/intraLATA.[176]

67. We used "interstate/intrastate" in the *1995 Report and Order* in order to adopt rules that would be generally relevant to all jurisdictions. GCI correctly states that LATAs were created as a result of the divestiture of the Bell System, and that this action did not create LATAs in Alaska or Hawaii.[177] In order to accommodate the concerns raised by the parties, and to remove possible confusion or uncertainty about the scope of our rules, we will modify Section 64.1150(e)(4) to use both the interstate/intrastate and interLATA/intraLATA terms.

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[169] NAAG Petition at 5. *See supra* para. 26.

[170] *See supra* para. 27.

[171] 47 U.S.C. § 64.1150(e)(4).

[172] *See supra* note 8.

[173] Allnet Petition at 1. Allnet seeks this modification because consumers in some jurisdictions may choose separate carriers for their interLATA and intraLATA toll service, but there is no evidence that consumers anywhere in the country may select separate interstate vs. intrastate interexchange carriers. *Id.*

[174] Sprint Opposition at 2.

[175] *See, e.g.*, GCI comments at 2.

[176] GCI Comments at 3-4.

[177] *Id.*

H. Service Contracts and the Commission's LOA Rules (Section 64.1150)

68. Frontier argues that the Commission's rules concerning the format of an LOA should not apply to consumers who have executed written contracts to obtain an IXC's services.[178] Notwithstanding its position, however, Frontier states that it would not object to a requirement that written contracts contain no promotional materials or be severable from such materials.[179] SWBT disagrees with Frontier and argues that a contract should contain language that adheres to the Commission's LOA requirements.[180]

69. We agree with SWBT that, to the extent a telecommunications services contract also authorizes a change in a business or residential PIC, that contract should be consistent with our LOA requirements. We believe that this clarification of our rules will ensure that business consumers and industry alike will be clearly informed as to what will be expected to authorize a change of that consumer's long distance telephone service. We have applied this rule to all other LOAs that authorize PIC changes. We see no meaningful distinction that would lead us to depart from this approach for contracts that serve as LOAs.

I. Clarification of Verification Procedures

70. Section 64.1100 of our rules lists four options from which carriers may choose to confirm PIC-change orders generated by telemarketing. The Commission first adopted this provision in 1992 in its *PIC Verification Order*, which required IXCs who submit PIC-change orders to LECs on behalf of customers to implement one of four procedures to verify such orders.[181] When this rule was modified by our *1995 Report and Order*, the word "or" was inadvertently deleted after option (a) of the revised rule. The Commission has always intended to require that only one of the four verification options be used to verify subscriber PIC-change orders.[182] Thus, we amend the rule by adding "or" after option (a).[183] We find the correction of this inadvertent omission to be good cause for amending the rule; hence, we adopt this rule change without prior notice pursuant to our authority under Section 1.412(c) of our rules.[184]

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[178] Frontier Petition at 1.

[179] Frontier Petition at 2.

[180] SWBT Reply at 3.

[181] *PIC Verification Order*, 7 FCC Rcd. at 1045.

[182] *See, e.g., PIC Verification Reconsideration Order*, 8 FCC Rcd at 3215-16 ("we required [in the *PIC Verification Order]* IXCs that submit PIC change orders on behalf of customers to LECs to institute *one of four* confirmation procedures . . .") (emphasis added).

[183] *See* Appendix B.

[184] 47 C.F.R. § 1.412(c) ("Rule changes may in addition be adopted without prior notice in any situation in which the Commission for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest.").

V. PROCEDURAL MATTERS

A. *Ex Parte* Presentations

71. This Further Notice is a permit-but-disclose rule making proceeding. *Ex parte* presentations are permitted, in accordance with the Commission rules, provided that they are disclosed as required.[185]

B. Initial Regulatory Flexibility Analysis

72. As required by the Regulatory Flexibility Act (RFA),[186] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in the Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Further Notice of Proposed Rule Making (Further NPRM). Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further NPRM provided in paragraph 109. The Secretary shall send a copy of this Notice to the Chief Counsel for Advocacy of the Small Business Administration (SBA) in accordance with the RFA.[187]

1. Need for and Objectives of the Proposed Rules

73. The Commission, in its efforts to protect consumers from unauthorized switching of preferred carriers, and to implement provisions of the Telecommunications Act of 1996 pertaining to illegal changes in subscriber carrier selections, is issuing this Further NPRM to propose specific verification requirements for all carriers and to seek comments regarding the liability of (1) slammed consumers to carriers, (2) unauthorized carriers to properly authorized carriers, and (3) carriers to slammed consumers.

2. Legal Basis

74. This Further NPRM is adopted pursuant to Sections 1, 4(i), 4(j), 201-205, 258, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, 258, 303(r).

3. Description and Number of Small Entities Which May be Affected

75. As set forth above, the Commission is seeking comment on rules regarding subscriber carrier selection changes in its specific efforts to prevent illegal changes in subscribers' properly authorized carriers. Specifically, the Commission is: (1) seeking comment on the applicability of Sections 64.1100 and 64.1150 of our verification rules, 47 C.F.R. §§ 64.1100, 64.1150, to all telecommunications carriers; (2) seeking comment on the applicability of our verification rules when carriers solicit consumers regarding preferred carrier freezes; (3) seeking comment on whether the "welcome package" described in Section 64.1100(d) continues to be a viable and necessary carrier change verification alternative, and

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[185] *See generally* 47 C.F.R. §§ 1.1200, 1.1202, 1.1204, 1.1206.

[186] 5 U.S.C. § 603.

[187] 5 U.S.C. § 603(a).

whether consumers may derive any benefits from this option; (4) seeking comment on the quantity of costs and benefits associated with in-bound verification procedures; (5) seeking comment regarding consumer-to-carrier, carrier-to-carrier, and carrier-to-consumer liability in light of the Act's new provisions; and (6) seeking comment on whether to establish a "bright-line" evidentiary standard for determining whether a consumer has relied on a resale carrier's identity of its underlying, facilities-based network provider, hence requiring that the resale carrier notify the consumer if the underlying network provider is changed. Under the Act and proposed rules, small entities that violate the Commission's PC-change verification rules by slamming consumers shall be liable to the consumer's properly authorized carrier for all charges paid by the slammed consumer and for the value of any premiums to which the consumer would have been entitled if the slam had not occurred.

76. For the purposes of this analysis, we examined the relevant definition of "small entity" or "small business" and applied this definition to identify those entities that may be affected by the rules adopted in this Further NPRM. The RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities.[188] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA.[189] Moreover, the SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1,500 employees.[190] We first discuss generally the total number of small telephone companies falling within both of these categories. Then, we discuss the number of small businesses within other categories, and attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

77. As discussed *supra*, and consistent with our prior practice, we shall continue to exclude small incumbent LECs from the definition of "small entity" and "small business concerns" for the purpose of this IRFA. Because the small incumbent LECs subject to these rules are either dominant in their field of operations or are not independently owned and operated, consistent with our prior practice, they are excluded from the definition of "small entity" and "small business concerns."[191] Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small incumbent LECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will consider small incumbent LECs within this analysis and use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by SBA as "small business concerns."

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[188] *See* 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632).

[189] 15 U.S.C. § 632.

[190] 13 C.F.R. § 121.201.

[191] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, FCC 96-325, 11 FCC Rcd 15499, 61 Fed. Reg. 45476 at paras. 1328-30, 1342 (rel. Aug. 8, 1996) (*Local Competition First Report and Order*). We note that the U.S. Court of Appeals for the Eighth Circuit has stayed the pricing rules developed in the *Local Competition First Report and Order*, pending review on the merits. *Iowa Utilities Board v. FCC*, No. 96-3321 (8th Cir., Oct. 15, 1996).

Telephone Companies (SIC 4813)

78. *Total Number of Telephone Companies Affected.* The decisions and rules adopted herein may have a significant effect on a substantial number of small telephone companies identified by the SBA. The United States Bureau of the Census (Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone service, as defined therein, for at least one year.[192] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."[193] For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by this Further NPRM.

79. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telecommunications companies other than radiotelephone (wireless) companies (Telephone Communications, Except Radiotelephone). The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[194] According to the SBA definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons.[195] Of the 2,321 non-radiotelephone companies listed by the Census Bureau, 2,295 companies (or, all but 26) were reported to have fewer than 1,000 employees. Thus, at least 2,295 non-radiotelephone companies might qualify as small incumbent LECs or small entities based on these employment statistics. However, because it seems certain that some of these carriers are not independently owned and operated, this figure necessarily overstates the actual number of non-radiotelephone companies that would qualify as "small business concerns" under the SBA definition. Consequently, we estimate using this methodology that there are fewer than 2,295 small entity telephone communications companies (other than radiotelephone companies) that may be affected by the proposed decisions and rules and we seek comment on this conclusion.

80. *Local Exchange Carriers.* Although neither the Commission nor the SBA has developed a definition of small providers of local exchange services, we have two methodologies available to us for making these estimates. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813) (Telephone Communications, Except Radiotelephone) as previously detailed, *supra*. Our alternative method for estimation utilizes the data that we collect annually in connection with the Telecommunications Relay Service (TRS). This data provides us with the most reliable source of information of which we are aware regarding the number of LECs nationwide. According to our most recent data, 1,347 companies reported

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[192] United States Department of Census, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, Firm Size 1-123 (1995) ("*1992 Census*").

[193] 15 U.S.C. § 632(a)(1).

[194] *1992 Census* at Firm Size 1-123.

[195] 13 C.F.R. § 121.201 (SIC Code 4812).

that they were engaged in the provision of local exchange services.[196] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of incumbent LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small LECs (including small incumbent LECs) that may be affected by the actions proposed in this Further NPRM.

81. *Non-LEC Wireline Carriers*. We next estimate the number of non-LEC wireline carriers, including interexchange carriers (IXCs), competitive access providers (CAPs), Operator Service Providers (OSPs), Pay Telephone Operators, and resellers that may be affected by these rules. Because neither the Commission nor the SBA has developed definitions for small entities specifically applicable to these wireline service types, the closest applicable definition under the SBA rules for all these service types is for telephone communications companies other than radiotelephone (wireless) companies. However, the TRS data provides an alternative source of information regarding the number of IXCs, CAPs, OSPs, Pay Telephone Operators, and resellers nationwide. According to our most recent data: 130 companies reported that they are engaged in the provision of interexchange services; 57 companies reported that they are engaged in the provision of competitive access services; 25 companies reported that they are engaged in the provision of operator services; 271 companies reported that they are engaged in the provision of pay telephone services; and 260 companies reported that they are engaged in the resale of telephone services and 30 reported being "other" toll carriers.[197] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs, CAPs, OSPs, Pay Telephone Operators, and resellers that would qualify as small business concerns under SBA's definition. Firms filing *TRS Worksheets* are asked to select a single category that best describes their operation. As a result, some long distance carriers describe themselves as resellers, some as OSPs, some as "other," and some simply as IXCs. Consequently, we estimate that there are fewer than 130 small entity IXCs; 57 small entity CAPs; 25 small entity OSPs; 271 small entity pay telephone service providers; and 260 small entity providers of resale telephone service; and 30 "other" toll carriers that might be affected by the actions and rules adopted in this Further NPRM.

82. *Radiotelephone (Wireless) Carriers*. The SBA has developed a definition of small entities for Wireless (Radiotelephone) Carriers. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.[198] According to the SBA's definition, a small business radiotelephone company is one employing fewer than 1,500 persons.[199] The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated,

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[196] Federal Communications Commission, CCB, Industry Analysis Division, *Telecommunications Industry Revenue: TRS Fund Worksheet Data*, Tbl. 1 (Number of Carriers Reporting by Type of Carrier and Type of Revenue) (Dec. 1996) (*"TRS Worksheet"*).

[197] *TRS Worksheet* at Tbl. 1 (Number of Carriers Reporting by Type of Carrier and Type of Revenue).

[198] *1992 Census* at Firm Size 1-123.

[199] 13 C.F.R. § 121.201 (SIC Code 4812).

we are unable to estimate with greater precision the number of radiotelephone carriers and service providers that would both qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that might be affected by the actions and rules adopted in this Further NPRM.

83. *Cellular and Mobile Service Carriers.* In an effort to further refine our calculation of the number of radiotelephone companies affected by the rules adopted herein, we consider the categories of radiotelephone carriers, Cellular Service Carriers and Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to Cellular Service Carriers and to Mobile Service Carriers. The closest applicable definition under SBA rules for both services is for telephone companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of Cellular Service Carriers and Mobile Service Carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 792 companies reported that they are engaged in the provision of cellular services and 138 companies reported that they are engaged in the provision of mobile services.[200] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Cellular Service Carriers and Mobile Service Carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 792 small entity Cellular Service Carriers and fewer than 138 small entity Mobile Service Carriers that might be affected by the actions and rules adopted in this Further NPRM.

84. *Broadband PCS Licensees.* In an effort to further refine our calculation of the number of radiotelephone companies affected by the rules adopted herein, we consider the category of radiotelephone carriers, Broadband PCS Licensees. The broadband PCS spectrum is divided into six frequency blocks designated A through F. As set forth in 47 C.F.R. § 24.720(b), the Commission has defined "small entity" in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[201] Our definition of a "small entity" in the context of broadband PCS auctions has been approved by SBA.[202] The Commission has auctioned broadband PCS licenses in Blocks A through F. We do not have sufficient data to determine how many small businesses bid successfully for licenses in Blocks A and B. There were 183 winning bidders that qualified as small entities in the Blocks C, D, E, and F auctions. Based on this information, we conclude that the number of broadband PCS licensees affected by the decisions in the *Infrastructure Sharing Report & Order* includes, at a minimum, the 183 winning bidders that qualified as small entities in the Blocks C through F broadband PCS auctions.

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[200] *TRS Worksheet* at Tbl. 1 (Number of Carriers Reporting by Type of Carrier and Type of Revenue).

[201] *See Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap,* Report and Order, FCC 96-278, WT Docket No. 96-59, para. 60 (1996), 61 FR 33859 (Jul. 1, 1996).

[202] *See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, PP Docket No. 93-253, Fifth Report & Order, 9 FCC Rcd 5532, 5581-84 (1994).

85. *SMR Licensees*. Pursuant to 47 C.F.R.§ 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. This definition of a "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.[203] The rules proposed in this Further NPRM may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. We assume, for purposes of this IRFA, that all of the extended implementation authorizations may be held by small entities, which may be affected by the rules proposed in this Further NPRM.

86. *Potential SMR Licensees*. The Commission completed its auctions for geographic area licenses in the 900 MHz SMR band on April 15, 1996. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rule proposed in this Further NPRM includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of this IRFA, that all of the licenses may be awarded to small entities who, thus, may be affected by the rules proposed in this Further NPRM.

87. *Cable Systems*. SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than $11 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,423 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992.[204]

a) The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable

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[203] *See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool*, PR Docket No. 89-583, Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639, 2693-702 (1995); *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, PR Docket No. 93-144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making, 11 FCC Rcd 1463 (1995).

[204] *1992 Census* at Firm Size 1-123.

company," is one serving fewer than 400,000 subscribers nationwide.[205] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.[206] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the rules proposed in this Further NPRM.

b) The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[207] The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[208] Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450.[209] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

4. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements

88. The proposed rules would impose verification and disclosure requirements upon telecommunications carriers that wish to submit or execute a change in a subscriber's selection of a provider of telecommunications service. Both submitting and executing telecommunications carriers may be required to ensure that a carrier change comports with the verification requirements of 47 C.F.R. §§ 64.1100 and 64.1150 established by the Commission. Furthermore, if a subscriber is a victim of slamming, the unauthorized carrier would be required to remit to the properly authorized carrier (1) all charges paid by the subscriber from the time the slam occurred, and (2) the value of any premiums to which the subscriber would have been entitled if the slam had not occurred. The properly authorized carrier would be required to request such payments from the unauthorized carrier within ten days of

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[205] 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393.

[206] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[207] 47 U.S.C. § 543(m)(2).

[208] 47 C.F.R. § 76.1403(b).

[209] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

notification from the subscriber that an unauthorized carrier change has occurred. Upon notification that the subscriber has been slammed, the unauthorized carrier must remit such payments to the properly authorized carrier. The subscriber's preferred telecommunications carrier would then be responsible for making its subscriber whole by restoring any premiums to which the subscriber would have been entitled had the slam not occurred. In the event of disputes between carriers regarding the transfer of charges and the value of lost premiums, the carriers would be required to pursue private settlement negotiations before instituting proceedings before the Commission to resolve such disputes.

5. Significant Alternatives to Proposed Rules Which Minimize the Significant Economic Impact on Small Entities and Small Incumbent LECs and Accomplish Stated Objectives

89. The Commission has considered proposing no rule changes beyond those specifically required by the Act. Therefore, as discussed above, we are proposing very limited rule changes from our existing rules which, given that slamming is becoming an increasingly prevalent practice, we believe are minimally intrusive steps necessary to discourage possible evasion of the Subscriber Carrier Selection Change requirements contained in Section 258 of the Communications Act. We propose that, in the event of a dispute between carriers under this liability provision, the carriers involved in such disputes must pursue private settlement negotiations regarding the transfer of charges and the value of lost premiums from the unauthorized carrier to the properly authorized carrier. We believe that the adoption of such a dispute mechanism will lessen the economic impact of a dispute on small entities. Under the proposed rules, telecommunications carriers, including small entities, that violate the Commission's PIC verification rules and slam consumers would be liable to the consumer's properly authorized carrier in an amount equal to all charges paid by the "slammed" consumer plus the value of premiums to which a slammed consumer would have been entitled had the slam not occurred. We invite parties commenting on this regulatory analysis to provide information as to the number of small businesses that would be affected by our proposed regulations and identify alternatives that would reduce the burden on these entities while still ensuring that consumers' telecommunications carrier selections are not changed without their authorization.

90. Although we proposed no rule regarding the circumstances under which resale carriers must notify their subscribers of a change in their underlying network provider, we received a request for clarification of this issue from TRA.[210] TRA proposes that, instead of determining the materiality of such changes on a case-by-case basis, we establish a "bright-line" test that would offer the consumer safeguards now provided by the current case-by-case approach, while minimizing the regulatory burden on small to mid-sized carriers.[211] According to TRA, the unpredictability of the case-by-case approach is unduly burdensome on small to mid-sized resale carriers, and thus diminishes competition. We invite parties to comment on whether the current case-by-case approach has a significant economic impact on small entities, and on whether our proposal to establish a bright-line test for determining whether a consumer has relied on a resale carrier's identity of its underlying facilities-based network provider, hence requiring that the resale carrier notify the consumer if the underlying network provider is changed, would minimize

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[210] *See Further NPRM*, *supra*, paras. 36-40.

[211] TRA proposes that customer notification be required only if a resale carrier either: (1) identified its underlying network provider to its customers and committed to those customers in writing that it would not switch networks; or (2) identified its network provider on a bill or other correspondence to its customers within six months prior to the change in network provider. *See supra* para. 37.

any significant economic impact. We also seek comment on alternatives that would reduce the burden on these entities without diminishing consumer safeguards now in place.

6. Federal Rules that May Overlap, Duplicate, or Conflict with the Proposed Rules

91. None.

C. Final Regulatory Flexibility Analysis

92. As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rule Making (NPRM) in the Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carrier.[212] The Commission sought written public comment on the proposals in the NPRM, including on the IRFA.[213] The Commission's Final Regulatory Flexibility Analysis (FRFA) in this Memorandum Opinion and Order on Reconsideration conforms to the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104-121, 110 Stat. 847 (1996).[214]

1. Need for and Objectives of this Memorandum Opinion and Order on Reconsideration and the Rules Adopted Herein

93. The Commission adopts in this Order on Reconsideration rules that: (1) modify Section 64.1150(g) to clarify that interexchange carriers (IXCs) using LOAs must fully translate their LOAs into the same language(s) as their associated promotional materials, oral descriptions and instructions; (2) modify Section 64.1150(e)(4) to incorporate the terms "interLATA and intraLATA," as well as "interstate and intrastate"; and (3) modify Section 64.1100(a) to clarify that IXCs must employ only one of the four verification options in Section 64.1100 to verify subscriber change orders generated by telemarketing. The objectives of the rules adopted in this Order on Reconsideration are to provide adequate safeguards to protect consumers from unauthorized switching of their long distance carriers and to encourage full and fair competition among telecommunications carriers in the marketplace.

2. Summary and Analysis of the Significant Issues Raised by the Public Comments in Response to the IRFA

94. In the IRFA, the Commission found that the rules it proposed to adopt in this proceeding may have a significant impact on a substantial number of small businesses as defined by section 601(3) of the RFA. Specifically, small entities may feel some economic impact in

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[212] *NPRM*, 9 FCC Rcd. 6885 (1994).

[213] *NPRM* paras. 20-27.

[214] SBREFA was codified as Title II of the Contract With America Advancement Act of 1996 (CWAAA), 5 U.S.C. § 601 *et seq.*

additional printing costs due to the new requirement that IXCs must fully translate their LOAs into the same language(s) as their associated promotional materials, oral descriptions and instructions under Section 64.1150(g). The IRFA solicited comment on alternatives to our proposed rules that would minimize the impact on small entities consistent with the objectives of this proceeding. Although the Commission has requested further comment on a number of these rules, the Commission received no comment(s) on the potential impact on small business entities with respect to the rules we adopt today.

3. Description and Estimates of the Number of Small Entities to Which the Rules adopted in the Memorandum Order and Opinion on Reconsideration in CC Docket No. 94-129 Will Apply

95. For the purposes of this analysis, we examined the relevant definition of "small entity" or "small business" and applied this definition to identify those entities that may be affected by the rules adopted in this Order on Reconsideration. The RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. § 632, unless the Commission has developed one or more definitions that are appropriate to its activities.[215] Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[216] Moreover, the SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1,500 employees.[217]

Telephone Companies (SIC 4813)

96. *Total Number of Telephone Companies Affected.* The decisions and rules adopted herein may have a significant effect on a substantial number of small telephone companies identified by the SBA. The United States Bureau of the Census (Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone service, as defined therein, for at least one year.[218] This number contains a variety of different categories of carriers, including local exchange carriers (LECs), IXCs, competitive access providers (CAPs), cellular carriers, mobile service carriers, operator service providers (OSPs), pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3,497 telephone service firms are not IXCs, or may not qualify as small entities because they are not

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[215] *See* 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. § 632).

[216] 15 U.S.C. § 632.

[217] 13 C.F.R. § 121.201.

[218] *1992 Census* at Firm Size 1-123.

"independently owned and operated."[219] For example, a PCS provider that is affiliated with an IXC having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity IXCs that may be affected by this Order on Reconsideration.

97. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telecommunications companies other than radiotelephone (wireless) companies (Telephone Communications, Except Radiotelephone). The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[220] According to the SBA definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons.[221] Of the 2,321 non-radiotelephone companies listed by the Census Bureau, 2,295 companies (or, all but 26) were reported to have fewer than 1,000 employees. Thus, at least 2,295 non-radiotelephone companies might qualify as small incumbent LECs or small entities based on these employment statistics. However, because it seems certain that some of these carriers are not independently owned and operated, this figure necessarily overstates the actual number of non-radiotelephone companies that would qualify as "small business concerns" under the SBA definition. Moreover, although the rules adopted herein apply only to IXCs, this figure includes entities other than IXCs. Consequently, we estimate using this methodology that there are fewer than 2,295 small entity telephone communications companies (other than radiotelephone companies) that may be affected by the proposed decisions and rules and we seek comment on this conclusion.

98. *Non-LEC wireline carriers.* We next estimate the number of non-LEC wireline carriers, including IXCs, CAPs, OSPs, Pay Telephone Operators, and resellers that may be affected by these rules. Because neither the Commission nor the SBA has developed definitions for small entities specifically applicable to these wireline service types, the closest applicable definition under the SBA rules for all these service types is for telephone communications companies other than radiotelephone (wireless) companies. However, the TRS data provides an alternative source of information regarding the number of IXCs, CAPs, OSPs, Pay Telephone Operators, and resellers nationwide. According to our most recent data: 130 companies reported that they are engaged in the provision of interexchange services; 57 companies reported that they are engaged in the provision of competitive access services; 25 companies reported that they are engaged in the provision of operator services; 271 companies reported that they are engaged in the provision of pay telephone services; and 260 companies reported that they are engaged in the resale of telephone services and 30 reported being "other" toll carriers.[222] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of

[219] 15 U.S.C. § 632(a)(1).

[220] *1992 Census* at Firm Size 1-123.

[221] 13 C.F.R. § 121.201 (SIC Code 4812).

[222] *TRS Worksheet* at Tbl. 1 (Number of Carriers Reporting by Type of Carrier and Type of Revenue).

IXCs, CAPs, OSPs, Pay Telephone Operators, and resellers that would qualify as small business concerns under SBA's definition. Firms filing *TRS Worksheets* are asked to select a single category that best describes their operation. As a result, some long distance carriers describe themselves as resellers, some as OSPs, some as "other," and some simply as IXCs. Consequently, we estimate that there are fewer than 130 small entity IXCs; 57 small entity CAPs; 25 small entity OSPs; 271 small entity pay telephone service providers; and 260 small entity providers of resale telephone service; and 30 "other" toll carriers that might be affected by the rules proposed in this Order on Reconsideration.

99. *Radiotelephone (Wireless) Carriers.* The SBA has developed a definition of small entities for Wireless (Radiotelephone) Carriers. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.[223] According to the SBA definition, a small business radiotelephone company is one employing fewer than 1,500 persons.[224] The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable to estimate with greater precision the number of Radiotelephone Carriers and service providers that would qualify as small business concerns under SBA's definition. We are also unable to estimate how many of these entities are IXCs. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that might be affected by the rules proposed in this Order on Reconsideration.

100. *Cellular and Mobile Service Carriers.* In an effort to further refine our calculation of the number of radiotelephone companies affected by the rules adopted herein, we consider the categories of radiotelephone carriers, Cellular Service Carriers and Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to Cellular Service Carriers and to Mobile Service Carriers. The closest applicable definition under SBA rules for both services is for telephone companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of Cellular Service Carriers and Mobile Service Carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS. According to our most recent data, 792 companies reported that they are engaged in the provision of cellular services and 138 companies reported that they are engaged in the provision of mobile services.[225] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Cellular Service Carriers and Mobile Service Carriers that would qualify as small business

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[223] *1992 Census* at Firm Size 1-123.

[224] 13 C.F.R. § 121.201 (SIC Code 4812).

[225] *TRS Worksheet* at Tbl. 1 (Number of Carriers Reporting by Type of Carrier and Type of Revenue).

concerns under SBA's definition. We are also unable to estimate how many of these entities are IXCs. Consequently, we estimate that there are fewer than 792 small entity Cellular Service Carriers and fewer than 138 small entity Mobile Service Carriers that might be affected by the rules proposed in this Order on Reconsideration.

101. *Broadband PCS Licensees.* In an effort to further refine our calculation of the number of radiotelephone companies affected by the rules adopted herein, we consider the category of radiotelephone carriers, Broadband PCS Licensees. The broadband PCS spectrum is divided into six frequency blocks designated A through F. As set forth in 47 C.F.R. § 24.720(b), the Commission has defined "small entity" in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[226] Our definition of a "small entity" in the context of broadband PCS auctions has been approved by SBA.[227] The Commission has auctioned broadband PCS licenses in Blocks A through F. We do not have sufficient data to determine how many small businesses bid successfully for licenses in Blocks A and B. There were 183 winning bidders that qualified as small entities in the Blocks C, D, E, and F auctions. We are unable to estimate how many of these entities are IXCs. Based on this information, we conclude that the number of broadband PCS licensees in Blocks C through F that might be affected by the rules proposed in this Order on Reconsideration includes, at most, the 183 winning bidders that qualified as small entities in the Blocks C through F broadband PCS auctions.

102. *SMR Licensees.* Pursuant to 47 C.F.R.§ 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. This definition of a "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.[228] The rules adopted in this Order on Reconsideration may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many IXCs provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation

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[226] *See* Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, FCC 96-278, WT Docket No. 96-59, para. 60 (1996), 61 FR 33859 (July 1, 1996).

[227] *See* Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, Fifth Report & Order, 9 FCC Rcd 5532, 5581-84 (1994).

[228] *See* Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-583, Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639, 2693-702 (1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making, 11 FCC Rcd 1463 (1995).

authorizations, nor how many of these providers have annual revenues of less than $15 million. We assume, for purposes of this FRFA, that all of the extended implementation authorizations may be held by IXCs that are small entities, which may be affected by the decisions and rules adopted in this Order on Reconsideration.

103. The Commission completed its auctions for geographic area licenses in the 900 MHz SMR band on April 15, 1996. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. We are unable to estimate how many of these entities are IXCs. Based on this information, we conclude that the number of geographic area SMR licensees that may be affected by the rules adopted in this Order on Reconsideration includes, at most, these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses, or how many of these entities will be IXCs. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of this FRFA, that all of the licenses may be awarded to IXCs that are small entities which, thus, may be affected by the decisions in this Order on Reconsideration.

4. Summary of Projected Reporting, Recordkeeping and other Compliance Requirements

104. The Commission, by this Order on Reconsideration, (1) directs carriers that use LOAs to fully translate their LOAs into the same language(s) as their associated promotional materials, oral descriptions and instructions; (2) rules that it will modify Section 64.1150(e)(4) to incorporate the terms "interLATA" and "intraLATA," as well as "interstate" and "intrastate" in the statutory language; and (3) clarifies that IXCs must employ only one of the four options in Section 64.1100(a) to verify subscriber change orders generated by telemarketing. The Commission has determined that compliance with these provisions may require carriers to modify their marketing and advertising materials.

5. Steps Taken to Minimize the Significant Economic Impact of This Memorandum Opinion and Order on Small Entities and Small Incumbent LECs, Including the Significant Alternatives Considered and Rejected

105. After consideration of potential alternatives, the Commission determined that the requirement that carriers translate LOAs into the same language as their associated promotional materials or oral descriptions and instructions may have a significant impact on a substantial number of small businesses as defined by section 601(3) of the RFA. Specifically, small entities may feel some economic impact in additional printing costs due to the new requirement under Section 64.1150(g). Nevertheless, the overwhelming majority of commenters supported our adoption of this rule, without providing specific comment regarding the economic impact to small entities or alternatives to lessen the economic impact. Since IXCs are already required by statute

to comply with the Commission's PIC-change verification procedures, this new requirement regarding the use of LOAs would not have a significant economic impact on those telecommunications carriers that employ other verification options. Moreover, because the rules will not take effect for one hundred fifty (150) days, we believe all IXCs, large and small, will have sufficient advance time to revise and print new LOAs, if necessary. By enacting this rule, the Commission is only requiring that IXCs using LOAs ensure that the language of their promotional material matches that which authorizes a change in subscriber service. Even if the economic impact is significant to some small entities, the benefit of protecting non-English speaking consumers from being mislead by language that they may not fully understand is consistent with the stated objectives, and thus justifies any increase in printing costs.

106. The Commission determined that the rule incorporating the terms "interLATA and intraLATA" as well as "interstate and intrastate" contained in this Order on Reconsideration will not impose any additional requirements on IXCs. These terms were incorporated only to remove possible confusion or uncertainty as to the scope of our rules as pertaining to all jurisdictions. Likewise, the rule clarifying that IXCs must employ only one verification option will not impose any additional requirements on IXCs. Therefore, adoption of these rules should have little or no economic impact on small entities. Because we conclude that adoption of these rules will cause little or no economic impact on small entities, we have identified no significant alternatives, nor were any offered by parties commenting on the IRFA.

6. Report to Congress

107. The Commission shall send a copy of this FRFA, along with this Memorandum Opinion and Order on Reconsideration, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this FRFA will also be published in the Federal Register.

D. Initial Paperwork Reduction Act of 1995 Analysis

108. This Further NPRM contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Further NPRM, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. Public and agency comments are due at the same time as other comments on this Further NPRM; OMB comments are due 60 days from date of publication of this Further NPRM in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

E. Comment Filing Procedures

109. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before **[30 days from Federal Register publication]**, and reply comments on or before **[45 days from Federal Register publication]**. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and eleven copies. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to Cathy Seidel of the Common Carrier Bureau, 2025 M Street, N.W., Washington, D.C. 20554. In addition, parties should file two copies of any such pleadings with the Formal Complaints Branch, Enforcement Division, Common Carrier Bureau, Mail Stop 1600A1, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

110. Parties may also file informal comments or an exact copy of formal comments electronically via the Internet to http://gullfoss.fcc.gov/cgi-bin/comment/comment.hts, or via e-mail to slamming@comments.fcc.gov. Only one copy of electronically-filed comments must be submitted. Parties must put the docket number of this proceeding in the subject line if comments are sent via e-mail (see the caption at the beginning of this Notice), or in the body of the text if by Internet. Parties must note whether an electronic submission is an exact copy of formal comments on the subject line. Parties also must include their full name and Postal Service mailing address in the electronic submission.

111. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions would be in addition to the formal filing requirements addressed above. Parties submitting diskettes should submit them along with their formal filings to the Office of the Secretary, and to Cathy Seidel of the Common Carrier Bureau, 2025 M Street, N.W., Room 6120, Washington, D.C. 20554. Such submission should be on 3.5 inch diskettes formatted in an IBM compatible form using MS DOS 5.0 and WordPerfect 5.1 software. The diskettes should be submitted in "read only" mode. The diskettes should be clearly labelled with the party's name, proceeding, type of pleading (comment or reply comments), Docket or Rule Making number, and date of submission. The diskette should be accompanied by a cover letter. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554. Electronically filed comments will be placed on the Commission's Internet server.

112. Written comments by the public on the proposed and/or modified information collections are due **[30 days]** from Federal Register publication. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications